United Nations CERD/C/HND/CO/1-5

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
13 March 2014
English
Original: Spanish

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined initial and second to fifth periodic reports of Honduras*

1. The Committee considered the combined initial and second to fifth periodic reports of Honduras, submitted in a single document (CERD/C/HND/1-5), at its 2667th and 2668th meetings (CERD/C/SR.2667 and 2668), held on 4 and 5 February 2014. At its 2288th meeting (CERD/C/SR.2288), held on 19 February 2014, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee notes with satisfaction the submission of the report of Honduras. Furthermore, while it regrets the late submission of the report, it expresses its appreciation for the presentation given by the delegation and the open and constructive dialogue as well as for the answers given to the many questions put by the Committee.

B. Positive aspects

3. The Committee welcomes the introduction of measures for social inclusion and the advancement of human rights with a view to promoting equality in Honduras, in particular the following:

(a) The adoption of the First Public Policy and National Action Plan on Human Rights;

(b) The adoption of programmes such as "Con Chamba Vivís Mejor" (Life is better with a job) programme, launched by the Ministry of Labour and Social Security, which currently has 236 companies affiliated and 900 young people participating, and the "Bono 10.000" (Voucher 10,000) programme, which consists in granting conditional cash transfers;

(c) The celebration of the African Heritage in Honduras Month (Decree No. 330-2002).

* Adopted by the Committee at its eighty-fourth session (3–21 February 2014).

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4. The Committee notes with satisfaction article 346 of the Constitution, which provides that it "is the duty of the State to adopt measures to protect the rights and interests of indigenous communities in the country, especially the lands and forests where they have settled".

5. The Committee highlights the importance of the First World Summit of Afro-descendants held from 18 to 21 August 2011 in La Ceiba, on the occasion of the International Year for People of African Descent, which brought together more than 1,400 people from 44 countries in the Americas, Europe, Asia and the Caribbean. It welcomes the La Ceiba Declaration and Plan of Action.

6. The Committee notes with satisfaction the standing invitation issued in 2010 to the United Nations special procedures.

C. Concerns and recommendations

Measures to combat structural discrimination

7. The Committee notes that the indigenous peoples and Afro-Honduran communities (especially Garifuna and English-speaking Afro-Hondurans) are particularly badly affected by poverty and social exclusion. According to the data provided by the State party, poverty affects 88.7 per cent of indigenous and Afro-Honduran children (relative poverty — 10.4 per cent; extreme poverty — 78.4 per cent). According to the data, poverty is a particular problem among Tolupan, Lenca and Pech children, where figures of over 88 per cent are reported (art. 2, para. 2).

The Committee urges the State party to continue implementing social inclusion and identity-based development programmes that reduce inequalities and poverty with a view to eliminating structural and historical poverty in the State party. The Committee recommends that action be taken to break the link between poverty and racism, inter alia, through special measures or affirmative action, taking into account its general recommendations No. 32 (2009) on the meaning and scope of special measures in the Convention and No. 34 (2011) on racial discrimination against people of African descent. Such action should include multilingual intercultural education activities, bearing in mind the need to strengthen or revive the languages of the indigenous peoples and Afro-Honduran communities.

Statistical data

8. The Committee is concerned by the fact that the report does not contain recent, reliable and comprehensive statistical data on the composition of the population, with disaggregated socioeconomic indicators, or information on the impact and results of social inclusion measures on the living conditions of the indigenous peoples and Afro-Honduran population (art. 2).

The Committee urges the State party to take into account the results of the 2013 census when developing its inclusion policies and social development programmes, to define indicators that will give a better picture of the situation in which the indigenous peoples and Afro-Honduran communities live and to devise methods for measuring outcomes so that the sustainability, scope and impact of its policies can be assessed. The Committee reminds the State party that disaggregated data are needed in order to develop public policies and suitable programmes for the population and to evaluate the implementation of the Convention in relation to the groups that make up society. The Committee requests the State party to include this information in its next report.

Definition of racial discrimination

9. The Committee expresses its concern about the definition of racial discrimination contained in the Constitution and the Criminal Code, as it does not encompass all the elements of the definition of racial discrimination set forth in the Convention (art. 1).

In view of its general recommendations No. 14 (1994) and No. 29 (2002) on article 1, paragraph 1, of the Convention, the Committee recommends that the State party bring the current definitions of racial discrimination and of the offence of racial discrimination into line with the definition in article 1 of the Convention.

Definition of offences of racial discrimination (or legislative measures)

10. The Committee notes that articles 321 and 321 A of the Criminal Code do not cover all the cases provided for in article 4 of the Convention (art. 4).

The Committee, taking into account its general recommendations No. 15 (1994) on article 4 of the Convention and No. 35 (2013) on combating hate speech, recommends that the State party bring the definition of the offence of racial discrimination into line with that contained in article 4 of the Convention.

Institutional measures

11. The Committee notes with concern that the Ministry of Justice and Human Rights and the Ministry for Indigenous and Afro-Honduran Peoples have been merged with other institutions and thus no longer have ministerial status (art. 2, para. 1).

The Committee takes note of the State party's undertaking that, in spite of the merger, these institutions will continue to fulfil their original mandate and to keep their own budget. The Committee nonetheless regrets that these institutions have lost ministerial status and urges the State party to provide them with the resources required to discharge their duties in accordance with their mandate.

National Human Rights Institution and the National Commission against Racial Discrimination, Racism, Xenophobia and Other Related Forms of Intolerance

12. The Committee notes the State party's budgetary efforts in favour of the Office of the National Commissioner for Human Rights (CONADEH); however, it is concerned at the loss of the Office's "A" status following an assessment of its compliance with the Paris Principles. The Committee also notes that steps have not been taken to ensure that the National Commission against Racial Discrimination, Racism, Xenophobia and Other Related Forms of Intolerance functions properly (art. 2, para. 1).

The Committee urges the State party to take the necessary steps to bring the Office of the National Commissioner for Human Rights into line with the Paris Principles (General Assembly resolution 48/134, annexed), including the appointment of a commissioner with the requisite knowledge of human rights through a process that adheres to the principles of financial and administrative transparency. The Committee also recommends that steps be taken to ensure the full functioning of the National Commission against Racial Discrimination, Racism, Xenophobia and Other Related Forms of Intolerance.

National Action Plan on Racism and Racial Discrimination

13. Noting the efforts to draw up a National Action Plan on Racism and Racial Discrimination, the Committee nonetheless expresses its concern about the stereotypes and prejudices prevailing in society and the persistent tensions in the State party, which are obstacles to intercultural understanding and the building of an inclusive and diverse society.

The Committee also notes the lack of information provided by the State party regarding the discrimination and racism encountered by certain groups, such as migrants (art. 2).

The Committee urges the State party to intensify awareness-raising campaigns against racial discrimination, stereotypes and all forms of discrimination. It also recommends that the State party actively pursue programmes fostering intercultural dialogue, tolerance and mutual understanding with regard to cultural diversity in the State party. The Committee further urges the State party to effectively implement the Convention through the National Action Plan on Racism and Racial Discrimination, currently being drawn up, in part by allocating sufficient human and financial resources for its implementation.

Measures against multiple discrimination

14. The Committee is concerned that women belonging to indigenous and Afro-Honduran communities still face multiple forms of discrimination in all aspects of social, political, economic and cultural life (art. 2, para. 2).

The Committee recommends that the State party take into consideration the Committee's general comment No. 25 (2000) on gender-related dimensions of racial discrimination and include a gender perspective in all policies and strategies against racial discrimination to address the multiple forms of discrimination encountered especially by women in indigenous and Afro-Honduran communities. It further recommends the production of disaggregated data on this topic.

The situation of human rights defenders

15. While noting that a bill on protecting human rights defenders, journalists, social communicators and justice officials has been drafted, the Committee regrets that human rights defenders, especially indigenous and Afro-Honduran leaders, continue to be subject to serious physical assault. The Committee is also concerned by information received indicating the failure of the police and the judiciary to take appropriate action (art. 2).

The Committee recommends that the State party put in place all necessary measures to protect human rights defenders against all acts of intimidation or reprisal and any other arbitrary acts resulting from their activities. The Committee calls for the prompt adoption and implementation of the bill on protecting human rights defenders. It also recommends that the State party consider its general comment No. 13 (1994) on the training of law enforcement officials in the protection of human rights and urges the State party to improve the training of law enforcement officials, particularly police officers, with a view to fully implementing the provisions of the Convention.

Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage

16. The Committee takes note of the information provided by the State party regarding the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage. The Committee notes that, between 2002 and 2013, the Special Prosecutor received 55 complaints for discrimination offences, of which 31 are under investigation, 17 were dismissed, 4 were brought to trial and 3 were resolved by other means. According to information from alternate sources, no penalties have been imposed for this offence. The Committee is concerned by the small number of complaints filed with the Special Prosecutor and by the disproportionality between the number of complaints dismissed and those brought to trial (art. 6).

The Committee recommends that the State party consider its general comment No. 31 (2005), on the prevention of racial discrimination in the administration and

functioning of the criminal justice system, especially the obligation to facilitate access to justice by providing legal information and advice to victims as well as the need to ensure the accessibility of services so that indigenous peoples and Afro-Honduran communities, and their members, may bring individual or collective complaints. The State party is urged to remind members of the Public Prosecution Service that it is in the public interest to prosecute racist acts given their harmful effect on social cohesion and society.

Organic Act on Employment and Economic Development Areas

17. The Committee notes with concern the information received that the Organic Act on Employment and Economic Development Areas allows for the concession of strips of land to investors. These areas have operational and administrative autonomy, and may have autonomous and independent courts with exclusive jurisdiction and their own security forces, which could have drastic consequences on the indigenous peoples and Afro-Honduran communities living in these regions (art. 2, paras. 1 and 6).

The Committee requests the State party to provide further information about the Organic Act on Employment and Economic Development Areas. It recommends that the State party consider the compatibility of the Organic Act with the international instruments it has adopted, especially those relating to the rights of indigenous peoples and Afro-descendants, given that these international instruments have constitutional rank.

Independence of the judiciary

18. Noting the additional information received following the dialogue between the Committee and the delegation of the State party, the Committee remains concerned about the removal from office of various judges, specifically the members of the Constitutional Chamber of the Supreme Court.

In the light of its general comment No. 31 (2005) and the Bangalore Principles of Judicial Conduct of 2001 (E/CN.4/2003/65, annexed), the Committee reminds the State party that the principle of judicial tenure is a fundamental guarantee for the protection of judicial independence and human rights, including those covered in the Convention. The Committee requests the State party to provide information about the removal from office on 12 December 2012 of four Constitutional Chamber judges.

The situation of Miskito divers

19. The Committee remains concerned about the deplorable situation of Miskito divers who suffer work injuries because minimum safe diving conditions are not in place. Although it notes the establishment of an inter-agency commission to address and prevent the problem of underwater fishing, the Committee regrets the lack of information about measures taken to assist divers who have developed a disability and to prevent this abusive practice (art. 2, para. 2).

The Committee requests that the State party provide information about the exact situation of the Miskito divers concerned, the inspections programmes it has carried out on this issue, the availability of social programmes, insurance schemes and health services, any penalties imposed and compensation awarded and any other actions taken by the inter-agency commission. The Committee also requests information regarding the participation of the Miskito people in the decisions and measures taken in this connection.

Consultation with indigenous peoples and Afro-Honduran communities

20. The Committee notes with concern the information received from various sources regarding the lack of systematic free, prior and informed consultation with indigenous and Afro-Honduran peoples on development and natural resources projects (including hydroelectric and mining projects) and other legislation or programmes affecting them. While the State party has made efforts to ensure the participation of indigenous peoples, the Committee is concerned at the lack of information on how this right has been implemented. The Committee also notes the importance of free, prior and informed consultation and of access to justice in relation to the titling of lands and territories (art. 5 (c)).

In light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party to establish practical mechanisms for implementing the right to consultation in a manner that respects the free, prior and informed consent of the affected peoples and communities and to ensure that consultations are carried out systematically and in good faith. It also recommends that an independent body carry out impact studies before permission is granted for natural resource exploration and exploitation in areas traditionally inhabited by indigenous peoples and Afro-Honduran communities. The Committee further recommends that indigenous peoples and Afro-Honduran communities be guaranteed access to the courts so that they may defend their traditional rights, their right to be consulted before concessions are awarded and their right to receive fair compensation for any harm or damage suffered. The Committee notes that ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) is directly applicable and that the absence of national legal provisions in this regard does not release the State party from its obligation to implement the right to free, prior and informed consultation.

Participation of indigenous peoples and Afro-Honduran communities

21. Notwithstanding the progress achieved in Honduras, the Committee notes that indigenous peoples and Afro-Honduran communities still face significant barriers to full participation and representation in decision-making bodies (art. 5 (c)).

In the light of its general recommendations No. 23 (1997) and No. 34 (2011), the Committee recommends that the State party redouble its efforts to ensure the full participation of indigenous peoples and Afro-Honduran communities, especially women, in all decision-making institutions, particularly in representative institutions and those dealing with public affairs, and that it take effective measures to ensure that all indigenous peoples and Afro-Honduran communities participate at all levels of public service. The Committee also recommends that the State party take special measures (affirmative action), in accordance with the Convention and the Committee's general recommendation No. 32 (2009).

D. Other recommendations

Declaration under article 14 of the Convention

22. The Committee urges the State party to consider making the optional declaration provided for in article 14 of the Convention.

Amendment to article 8 of the Convention

23. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the International Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General

Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Durban Declaration and Programme of Action

24. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the Convention into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

Dissemination of reports and concluding observations

25. The Committee recommends that the State party's reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Consultations with civil society organizations

26. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, in connection with the preparation of its next periodic report and its follow-up to these concluding observations.

Follow-up to concluding observations

27. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 10, 17, 18 and 19 above.

Paragraphs of particular importance

28. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 8, 16, 20 and 21 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Common core document

29. The Committee recommends that the State party submit its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the Fifth Inter-Committee Meeting of the human rights treaty bodies, held in June 2006 (see document HRI/GEN/2/Rev.6, chap. I).

Preparation of the next report

30. The Committee recommends that the State party submit its sixth to eighth periodic reports in a single document by 9 November 2017, taking into account the treaty-specific

reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports (HRI/GEN/2/Rev.6, chap. I, para. 19).